

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RICHARD R. GATES,

Plaintiff,

v.

D. POAG, *et al.*,

Defendants.

Case No. 3:16-cv-00401-MMD-CBC

ORDER

Pro se Plaintiff Richard R. Gates, currently incarcerated and in the custody of the Nevada Department of Corrections (“NDOC”), alleged violations of his Eighth Amendment right to be free from cruel and unusual punishment under 42 U.S.C. § 1983 against correctional facility medical officials generally arising from his contention that he was not permitted to refill his inhaler prescription sufficiently frequently. (ECF No. 5.) The Court previously granted summary judgment to Defendants. (ECF Nos. 52 (order), 53 (judgment).) Before the Court is Plaintiff’s motion for a certificate of appealability. (ECF No. 54.)

However, as Defendants point out (ECF No. 55 at 2), “Plaintiff does not need a certificate of appealability.” *Hulihan v. Reg’l Transp. Comm’n of S. Nevada*, Case No. 2:09-CV-01096-ECR, 2012 WL 3135681, at *1 (D. Nev. Aug. 1, 2012). “The requirement for a certificate of appealability only applies to claims for habeas corpus relief arising under 28 U.S.C. § 2254 or § 2255.” *Id.* (citation omitted). Moreover, Plaintiff has already filed an appeal (ECF No. 58), so the Court lacks jurisdiction to consider Plaintiff’s motion anyway. *See, e.g., Kern Oil & Ref. Co. v. Tenneco Oil Co.*, 840 F.2d 730, 734 (9th Cir. 1988) (“filing a notice of appeal usually divests the district court of jurisdiction over the matters appealed.”). The Court will thus deny Plaintiff’s motion.

1 The Court notes that Plaintiff made several arguments and cited to several cases
2 not discussed above. The Court has reviewed these arguments and cases and determines
3 that they do not warrant discussion as they do not affect the outcome of the issues before
4 the Court.

5 It is therefore ordered that Plaintiff's motion for a certificate of appealability (ECF
6 No. 54) is denied.

7 DATED THIS 24th day of April 2020.

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A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE